Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	Docket No. CC 01-92
Developing a Unified Intercarrier	)	
Compensation Regime	)	DA 07-738
	)	

THE COMMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Pennsylvania Public Utility Commission (PaPUC) files this Reply Comment in response to the Federal Communication Commission's (FCC) Notice of Comment released February16, 2007 regarding an *ex parte* letter filed January 20, 2007, and corrected by another filing on February 7, 2007 identifying an amended analysis of the benefits of the Missoula Plan (the "Amended Missoula Plan").

Preliminary Observations. The PaPUC appreciates the opportunity to file this Comment. The PaPUC Comment should not be construed as binding on the PaPUC in any proceeding before the PaPUC nor the views of any PaPUC Commissioner or group of Commissioners. The Comment could change in response to subsequent events including review of filed Comments, subsequent filings in this docket, or further developments under state and federal law.

The January Ex Parte and the February Ex Parte. In January 2007, just a few days prior to the February 1, 2007 deadline for a Reply Comment, the Missoula Plan proponents generated a limited-circulation analysis detailing the putative benefits of the Missoula Plan. That initial analysis has since become the Amended Missoula Plan.

The Missoula Plan supporters filed the earlier limited-circulation document as a Letter with the FCC on January 30, 2007 (the *January Ex Parte).* For the reasons set out below, the PaPUC urges the FCC to consider rejecting the *January Ex Parte.*

The Cover Letter accompanying the *January Ex Parte* makes several statements that warrant clarification from the PaPUC's perspective. Pennsylvania was an interested state commission that was formulated after the submission of Comments.

The PaPUC was not asked to work with Missoula Plan supporters, did not submit work for, or actively participate in development of the *January Ex Parte* proposals. Moreover, the PaPUC notes that the FCC met with six Commissioners and staffers and industry supporters of the Missoula Plan during the recent NARUC meetings in Washington, DC (the *February Ex Parte).*

The PaPUC does not dispute that deliberative process. However, it is important to understand that the identified state commissions supporting the Amended Missoula Plan apparently limited involvement with the FCC during the NARUC meeting to the Missoula Plan proponents. Those states with significant concerns with the Missoula Plan and the Amended Missoula Plan did not participate in the *February Ex Parte.*

Deficiencies in the Amended Missoula Plan. The PaPUC suggests that the Amended Missoula Plan has several deficiencies. These include the Federal Benchmark Mechanism (FBM), little consideration of penetration rates, and reliance on end-user surcharges. The Amended Missoula Plan also fails to address other deficiencies in the earlier proposals as well.

The Federal Benchmark Mechanism (FBM). The *January Ex Parte* proposes a Federal Benchmark Mechanism (FBM) to compensate states for rates that exceed a $20 (Low Benchmark) to $25 (High Benchmark) range. The Amended Missoula Plan explains that this was to "ensure that all areas with early adopted initiatives receive support."

This is not entirely accurate for Pennsylvania. Pennsylvania has a policy which developed over 10 years and results in an approach that blends access rate decreases, local rates increases, and a state universal service fund. This cost in excess of $1 Billion since 1996. This $1 Billion figure does not include ancillary local rate rebalancing as well.

This Amended Missoula Plan does not address Pennsylvania's specific benchmark rate for its universal service program. Pennsylvania established alternative affordability mechanisms based on a detailed and thorough investigation of the local conditions in their respective states. Pennsylvania is a state with one of the largest number of rural citizens. An FBM acceptable to a few states is not necessarily a good benchmark for all 50 states.

Pennsylvania's long-standing universal service policy has a "high cost" benchmark of $18 for basic local residential service. The proposed FBM does not address these kinds of benchmarks. The FBM does not support lower benchmarks based on a state commission's knowledge of local impacts. The PaPUC understands and appreciates the desire to ameliorate total cost impact. However, an amelioration that increases end-user rates and Pennsylvania's net contributor role is a major concern to the PaPUC because of penetration and affordability.

The PaPUC is also concerned about the continuing lack of compensation for states, like Pennsylvania, that pursued a blending of universal service, local rate increases, and access rate decreases. Those blended results fall outside a proposal that compensates states which chose to focus reforms largely on local rates or access rates. A federal benchmark set higher than Pennsylvania's $18 benchmark effectively penalizes Pennsylvania and other states for taking a blended approach.

That is apparent because Pennsylvania could get more FBM funding if Pennsylvania kept rural access rates very high (since the FBM will now pay to lower high access rates) or if Pennsylvania increased local rates but failed to create a universal service fund (since the FBM compensates high-end local rates). Pennsylvania could also get more compensation if Pennsylvania kept universal service costs below $10 million (as opposed to $33 million) because the FBM limits state USF compensation to $10 million.

The PaPUC is concerned about an FBM proposal that picks policy winners and losers with the support of a few states years after implementation. In essence, early adopters that are net contributors to the federal USF are penalized, not rewarded, because they failed to anticipate what a few interstate reform advocates would suggest years later.

Finally, the PaPUC's concern with the Low-Rate Adjustment (LRA) in the FBM illustrates the issue. The LRA in the Amended Missoula Plan will cap the interstate residential SLC for carriers with rates lower than $20 to $2. This means that a carrier in a state with rates less than $20 will have to increase their lower rates by no more than $2. If they do, they obtain support from the Restructure Mechanism.[1]

The LRA cap seems to reward carriers and state commissions that did not aggressively pursue rate rebalancing or access reform before the Missoula Plan. Under the Amended Missoula Plan, those commissions and carriers now have to increase their largely unreformed local rate by no more than $2 before they benefit from the Restructure Mechanism.

The PaPUC is concerned about this. Support for the LRA and the $2 cap will come from surcharges on customers in states, like Pennsylvania, that increased local rates far more than $2 in the 10 years since enactment of TA-96. States that wisely avoided reform by keeping local service rates low now only have to increase their local rate by no more than $2 to obtain Missoula Plan support. Again, this result underscores the concern about the Amended Missoula Plan's willingness to pick and choose the regulatory winners or losers among states that pursued reforms before the Missoula Plan.

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[1] *"Missoula Plan Supporting Comparability: The Federal Benchmark Mechanism," (February 2007), p. 8 (February Ex Parte Presentation).*

Penetration Rates and End-User Surcharges. The PaPUC questions the Amended Missoula Plan's reliance on end-user surcharges because of the impact to penetration rates. The PaPUC is particularly concerned that larger surcharges will aggravate existing declines in the penetration rate in the net contributor states.

The PaPUC is concerned about the Amended Missoula Plan's reliance on end-user surcharges. Consumers experience end-user surcharges as an increase in their telephone service rates. However, penetration rates in Pennsylvania are declining.

The PaPUC notes that the November 2006 Universal Service Monitoring Report shows that the penetration rate for telephone service declined from 97.85 to 97.2% from 2001 through 2004. Delaware, the District of Columbia, Kentucky, Maryland, Virginia, and West Virginia also experienced similar declines in overall penetration rates.[2]

Pennsylvania is one of several states in our region of the country that are net contributors under the Amended Missoula Plan. Many of those states, and certainly Pennsylvania, were net contributors to the earlier reform proposals. Those reforms, however, resulted in surcharges that happened at roughly the same time that Pennsylvania experienced a decline in its penetration rate.

The PaPUC is concerned that increased surcharges will again result in greater declines in our penetration rate. The PaPUC suggests that other solutions, including using tariffed access to interstate telecommunications facilities as common carrier facilities, warrant consideration as alternative means of supporting intercarrier compensation reform. The PaPUC is very concerned that exclusive or significant reliance on end-user surcharges may be eroding the very universal service principle that the Missoula Plan proponents claim will be undermined in the absence of adopting this Amended Missoula Plan.

The Benefit and Burdens of the Amended Missoula Plan. The Amended Missoula Plan identified Pennsylvania as a state that will receive a purported $.70 benefit. The PaPUC finds this claim to be questionable for several reasons.

The $.70 benefit is not adjusted to reflect the cost to consumers of setting a compensation rate for dial-up internet access. Many consumers, and most particularly those in rural areas, continue to use the circuit-switched network to access the internet using dial-up. The PaPUC suggests that incorporation of an interstate compensation rate for dial-up internet access could quickly erode any purported $.70 benefit. That could occur because the hold times on the network for internet access are far longer than the hold time, traditionally in the 3-minute range, for long-distance access calls. The PaPUC suggests that it might not take very long before the allege $.70 benefit could become a net detriment for consumers using their reformed network to access the internet.

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[2] *Universal Service Monitoring Report,* CC Docket No. 98-202 (Data Received through May 2006) (*USF Monitoring Report),* Table 6.4, p. 6-14.

The PaPUC suggests that this amended version of the Missoula Plan may inadvertently burden Pennsylvania. The PaPUC notes, again, that the Amended Missoula Plan does not comprehensively address the difficult problem of costs of service and deployment of a modern network in thinly populated rural areas. The Amended Missoula Plan focuses almost exclusively on the costs of network deployment for non-Regional Bell Operating Companies (RBOCs) in Track 2 and Track 3 territories.

The PaPUC suggests that this exclusive focus on the benefits of an Amended Missoula Plan in non-RBOC study areas is inadvisable. The PaPUC notes that this focus may be contributing to recent industry developments including the proposal to spin-off rural study areas in RBOC territories like Vermont, New Hampshire and Maine. The PaPUC makes this observation because Pennsylvania two incumbent local exchange carriers (ILECs) that are subsidiaries of the Verizon Communications Corporation RBOC serve many rural exchanges within the Commonwealth. The Amended Missoula Plan does not seem to address that issue nor do the proponents suggest any compensation mechanism for states already undertaking efforts to reform rural service and promote broadband deployment in all rural study areas – including those of an RBOC.

The PaPUC suggests that a truly comprehensive intercarrier reform proposal should address all rural study areas. The FCC should consider solutions other than reliance on end-user surcharges.

Continuing Deficiencies. The PaPUC suggests that the Amended Missoula Plan contains many of the problems associated with the original proposal. This includes cost-based compensation, the difference in ARMIS-based rates of return, and Section 251(f).

The Amended Plan does not craft a proposal that would limit interstate carrier access charge reform recovery as a universal service cost. The Amended Plan does not ask carriers in net contributor states to provide documentation on their actual network costs as a condition of securing additional revenue guarantees for their rural study areas. The Amended Plan does not limit Track 2 and Track 3 support to the ARMIS-based rate of recovery for Track 1 carrier in the net contributor states. In addition, the Amended Missoula Plan does not address whether receipt of intercarrier compensation reform support should be conditioned on the waiver of any Section 251(f) rights. Finally, the Amended Missoula Plan appears to be more focused on revenue neutrality guarantees for Track 2 and Track 3 companies as compared to any commitment to ensuring that their services and rates are comparable to those in urban areas consistent with Section 254(g) ofTA-96.

For these reasons, the PaPUC's suggests that the Amended Missoula Plan suffers from many of the same structural defects as the original proposal. For the reasons set out in this Comment as well as the prior Comment and Reply Comment of the PaPUC, the PaPUC suggests that the FCC should proceed very cautiously before considering this Amended Missoula Plan.

Respectfully submitted,
Pennsylvania Public Utility Commission

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